IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4603 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL NAYNABEN REVABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4603 of 2000

MR KB PUJARA for Petitioner No. 1-2

MS MANISHA SHAH, Ld. AGP for Respondent No. 1-2

M/S THAKKAR ASSOC. for Respondent No. 3

MR JJ YAJNIK for Respondent No. 4

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 27/02/2003

ORAL JUDGEMENT

1. Rule. Ms.Manishah Shah, learned AGP, appears and waives service of notice of rule for respondents No.1 and 2., Ms.Pahwa, learned Counsel, appears and waives service of notice of rule for respondent No.3 and Mr.J.J.Yajnik, learned Counsel appears and waives service of notice of rule for respondent No.4. With the consent of the parties, the matter is taken up for final hearing today.

2. The present petition is preferred by the petitioners for declaring the action of respondents No.1, 2 and 3 in not granting the benefit of lien and as a consequence thereof the absorption, as bad in law and null and void. It is the case of the petitioners that they were working as primary teachers in Ashram Shala and as per the Government Resolution dated 23-8-1973, the petitioners would be entitled to have the right of lien. Earlier in this matter, by way of interim order, this Court had given direction to the Secretary, Education Department to consider the matter. It appears that on 21-6-2000, the Secretary, Education Department had considered the matter and in view of the Resolution dated 8-12-1999 of the State Government the request for lien is rejected.

3. Having heard the learned Counsel for the petitioners as well as for the respondents, in my view the present case is fully covered by the decision of this Court dated 1-2-2003 in SCA No.5378/2001 and allied matters. In the aforesaid decision dated 1-2-2003, in view of the judgement dated 12-7-2001 passed by this Court (Coram: P.B.Majmudar, J.) in SCA No.2506/2001 interpreting the resolution dated 8-12-1999, the matter was directed to be reconsidered. In view of the same reasoning, the case of the petitioner is also required to be considered by the Secretary, Education Department on the same line as has been directed in SCA No.5378/2001. In the present case also the petitioners were appointed prior to the resolution dated 8-12-1999 and, therefore, the matter is required to be considered accordingly. As observed in the earlier decision dated 1-2-2003 in SCA 5378/2001, the view taken by this Court (Coram: P.B.Majmudar, J.) interpreting the resolution dated 8-12-1999 is that those who were in the employment at the time when the resolution came to be passed should be extended the benefits of lien and they should have been eligible for such purpose.

4. No further discussion is required and on the basis of the same reasoning, the decision of the Secretary, Education Department, denying the benefits of lien to the petitioners on the basis of resolution dated

8-12-1999 is quashed and set aside. The Secretary, Education Department shall consider the matter afresh upon the representation which may be filed by the petitioners within a period of two weeks from today and the Secretary, Education Department, shall consider the matter afresh in view of the judgement of this Court (Coram: P.B.Majmudar, J.) and shall render the decision within a period of three months from the date of receipt of the order of this Court. It is further clarified that the Secretary, while passing the order, shall take into consideration all the details, which are produced by the petitioners, by the concerned Ashram Shala where the petitioners are working, by the District Panchayats and also the record which may be produced by the District Education Committee. The decision shall also be communicated to the petitioners by Registered A.D. post.

5. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. Office shall also send copy of the judgement dated 1-2-2003 passed by this Court in SCA No.5378/2001 and allied matter together with the writ of this order. Direct service is permitted.

18-2-2003 (Jayant Patel, J.)

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